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March 8, 2013

Mr. Eddie Streator

Designated Federal Officer

BIA, Wewoka Agency

P.O. Box 1540

Seminole, OK 74818

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FM Wewoka Agency

Dear Mr. Streator:

Please find enclosed comments of Jireh Resources LLC a producer in Osage county regarding the proposed rule changes regarding oil and gas production in Osage county. Please make these comments part of the official record in this matter.

Thank you for your help in this regard,

Sincerely,

A handwritten signature in black ink, appearing to read "David House". The signature is stylized with a large, looped "D" and a cursive "House".

David House

Thank you for the opportunity to comment on the proposed rule changes regarding oil and gas production in Osage county. As you are aware oil and gas activity has been ongoing for more than 100 years in this area. Certainly oil and gas production practices today are vastly different than they were in past decades and responsible producers have always made reasonable efforts to abide by the rules they have been subject to, whether from the Oklahoma Corporation Commission in seventy-six counties in Oklahoma or the BIA in Osage County. Some may observe that the production practices in Osage have been more negative to the land than has been noted in other counties in Oklahoma. To the extent any difference actually exists, such difference relates directly to the rules of the road as it relates to production.

I happen to have specific experience in the cleanup of abandoned surface situations in my role as the immediate past Chair and current Board member of the Oklahoma Energy Resource Board (OERB). As you are probably aware, the OERB is a non-appropriated state agency charged with two mandates, the cleanup of surface damage left in the past by oil and gas production for which there is no discernible responsible party and the education of the importance of the oil and gas industry to our state economy and its citizens.

I can say that it took OERB a long time for the BIA to even recommend to us sites to be restored, but once it was evident that we could make a substantial difference in the cleanup of surface OERB has been very active in Osage county cleaning up hundreds of sites all over the county. The lesson we have learned at OERB is that you cannot correct decades of action in a few short months. We have been cleaning up sites all over Oklahoma for twenty years, and we think we have tens of thousands of sites yet to clean up. The conclusion I drew when reviewing the substantial rewrite of the rules regarding production of oil and gas in Osage count is that someone believes that by writing a rule the ground changes overnight. Nothing could be further from the truth. The rule changes currently being proposed will take years, actually decades to be put into practice. I say that only because we have been at it for twenty years at OERB and we have just begun.

Some will correctly say that we are dealing with only one county, so it can go much faster. The truth is we are dealing with the largest county in Oklahoma, one that has had more wells drilled than any county in the state and perhaps has some of the poorer records regarding what has happened in the distant past.

I would encourage the BIA to consider that these rule changes need to be done in manageable parts, dealing with the various topics that may need to be addressed. Consider the wisdom of looking at the rules dealing with the financial aspects of the business. Adopt a rule making and let the public comment and work out the reasonable best solutions for that set of problems. Then begin another rule making to look at the surface situation or the drainage situation or some other aspect that may need updating. To take on the entire rule book at once is so voluminous that it is very likely errors will be made and the rule will have to be revisited again in the future. The last result that anyone seeks is the interruption of the current increase in activity due to regulatory uncertainty.

Reviewing specific parts of the rule change, I will highlight some of the most concerning. The payment of royalty on a price that does not exist for current physical production effectively exacts an increase in the royalty rate without just compensation. The written lease agreements that allocate risks contain the phrase subject to current regulations. To take the word regulation and use it to increase the royalty rate amounts is a use of poetic license that was not intended by the original parties to the agreement. Had they meant the BIA could arbitrarily increase the royalty rate at their whim there would have been specific language allowing the percentage of royalty to be adjusted on some periodic basis. This is simply a bureaucratic mindset of "gotcha" which has no place in the minds of serious regulators seeking to provide fair and balanced regulatory platforms from which operators can pursue their business. Why does the BIA stop at the NYMEX price, why not quote Brent Crude pricing. Certainly obtaining the NYMEX price for crude is just as spurious as trying to obtain Brent pricing. The fundamental premise of all oil and gas leases is that the royalty is paid on the price received by the lessee. Extracting a royalty payment based on some fictitious price is an unlevel playing field that equates to taxation without representation.

Another concerning provision is the ability of the Superintendent to declare drainage and force the drilling of a well or face lease cancellation. In the other seventy-six counties in Oklahoma, there is an administrative process at the Oklahoma Corporation Commission (OCC), which allows producers to claim drainage and deal with it on a scientific basis. Hearing are held before Administrative Law Judges with technical expertise to understand the scientific issues being address and they can make rulings based on scientific facts presented by the adversaries. Drainage is handled before the well is drilled by appropriate spacing requirements and production penalties for wells drilled too close to lease lines. With all due respect, where within the Superintendent's office does scientific, professional talent reside from which such a determination could be made, and what are the proposed rules to allow expert testimony and evidence to be presented that would rebut such a determination in the face of a lack of any evidence to the contrary. In fact, the proposed rules are rife with opportunity for the office of the Superintendent to make rulings without due notice, opportunity for rebuttal nor the statement of scientific or otherwise professional evidence as the basis for the ruling.

The requirement of the submission of more paper to the BIA makes us wonder about the result of all that paper. For instance, purchasers already provide run tickets to the BIA. Producers submit monthly production reports. Reasonable people can review these two documents and allowing for normal differences between production and sales make a reasonable determination that all the produced oil is being timely sold. What will BIA officials do with another set of the same documents that provide no more information and come from exactly the same source? Likewise, what will the BIA do with phone calls that would be required to be made prior to calling the purchaser. While this does not seem to be an onerous requirement, we need to be able to document that the call was made, and what about loads that are called in on weekends, holidays or after hours. Oil and gas production is a 24/7 business, not 9 to 5 Monday to Friday with twenty federal holidays and four weeks vacation.

Several of the proposed regulations impose fines that are so high they effectively result in the taking of property. The rightful purpose of any fine is to provide a deterrent to behavior that is a detriment to society. The fines should be in some normal way consistent with the possible outcome of the behavior entered into by the producer. What damage is done by failing to properly mark a tank battery or a well? Of course producers generally keep their signs up to date and accurate, but they are stolen, trampled by livestock, run over by BIA inspectors and a host of other possibilities exist. Why is there no grace period for a producer to be notified that the sign has been removed or demolished and needs to be replaced within a reasonable time before a reasonable fine begins. A fine of \$500 per day is often 5 times the gross revenue before expenses and royalty of a lease. Given how many things can happen to a sign that are out of the control of producers some reasonable time to cure and some reasonable level of fine would be a more user friendly approach. The same result can be said of the \$500 fine for not calling the BIA prior to calling the purchaser. Again what is gained by such a harsh penalty that there is no longer any incentive for a producer to continue to operate the lease?

In closing let me say that today's oil and gas producers are concerned with the environment. Our donation of over \$70,000,000 in the last twenty years to clean up past problems is a firm testament to that concern. To those who say we have not done enough and we should be fined and punished by the BIA we say, not so fast. We have lived up the expectations of the regulatory scheme we have been subjected to. If that scheme needs to change, fine, but let's change it in a reasonable graduated manner, not in a slap dash manner that drives producers away from Osage county. Producers today have unlimited places to allocate their very limited capital. Producers have obligations to owners and stockholders and they will always allocate capital where the best return exists considering all risk and reward factors. I suspect the surface owners of Osage wish they could get a new deal, one that does not allow for oil and gas production. But every one of these owners purchased land knowing the rules and I don't think the beneficiaries of the Osage royalty will be too happy if producers start allocating capital to projects outside the county because of overbearing and irresponsible regulation schemes.

Again thank you for the opportunity to submit comments and if appropriate we will be submitting more detailed comments in the future.

David House

Jireh Resources LLC

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